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115-1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 810.

THE UNION PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

PHILADELPHIA LAW ASSOCIATION

vs.

LUCIA KNUTH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED JANUARY 17, 1884.

SEC. 6. For the purpose of enabling any company to construct, equip and operate their road, they are hereby authorized to pledge or mortgage said road, rolling stock, machinery, depots and any other property they possess, together with the franchise of said road, for the liquidation of any indebtedness said railroad may incur in the construction of said road.

SEC. 7. All deeds for the conveyance of real estate of said company, shall be signed by the President of said company, and attested by the Secretary with the corporate seal attached, which shall be deemed and held a sufficient execution, authentication and acknowledgment of such deeds in all courts.

Approved March 5, 1862.

Compiled Laws of Kansas, 1862, p. 769.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Pleas in the circuit court of the United States for the eighth judicial circuit and district of Nebraska, before the Honorable Geo. W. McCrary, judge of the circuit court of the United States, and the Hon. Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in said circuit court, at the November term, 1883.

Be it remembered that on the 9th day of November, 1883, a transcript was filed in the office of the clerk of said circuit court; which said transcript is in words and figures following, to wit:

THE STATE OF NEBRASKA, } ss:
County of Dodge, }

Pleas before the district court of Dodge county, Nebraska, at a term begun and holden in the county of Dodge, on the 2d day of October, A. D. 1883, before Hon. A. M. Post, judge of said district court.

LUCIA KNUTH *vs.* THE UNION PACIFIC RAILWAY COMPANY.

Be it remembered that heretofore, to wit, on the 31st day of July, 1883, a petition was filed in the office of the clerk of the district court of Dodge county, in the words and figures following, to wit:

Petition.

In the District Court for Dodge County, Nebraska.

LUCIA KNUTH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendant.

2 The plaintiff complains of the defendant, for that on the 16th and 17th days of May, 1883, said defendant was and now is a corporation duly organized under and by virtue of acts of the Congress of the United States, and owned and operated a certain railroad known as the Union Pacific railway, running from Omaha, Nebraska, to Ogden, Utah Territory, and was a common carrier of passengers for hire upon said road.

That on the said 16th and 17th days of May, 1883, the plaintiff was a passenger upon said road, to be carried from the station thereon at Grand Island, Nebraska, to the town of North Bend, Nebraska, on said road, for a certain reward paid to the defendant.

That the train of cars on said road upon which plaintiff was being so carried as a passenger reached said town of North Bend about the hour of one o'clock a. m. on the 17th day of May, 1883.

That defendant was bound thereby to furnish suitable, proper, and safe means whereby she could safely leave the depot waiting, room and depot grounds at said station of North Bend. Yet said defendant totally neglecting and failed to perform its duties in that regard and did not furnish a proper, suitable, and safe means of conducting lawful business at said station, or proper, suitable, and safe means of egress from said station. That the doorway from which

persons entered and left the depot building and waiting-room at said station was only three feet from the end of said depot building.

That the platform in front and leading from said door and the end of said depot building was then elevated four feet above the ground, was narrow and angular and irregular in its course and construction, and entirely unguarded by steps, railing or other protection to prevent persons from falling off of the same, nor was
3 there then any light in or about said door or platform, and the said platform was not lighted in any manner, and the time aforesaid being night was dark and cloudy.

That the defendant in the construction of its platform as aforesaid and in leaving it unguarded and unlighted as aforesaid was negligent, and did not exercise proper care.

That the plaintiff in attempting to leave said waiting-room and depot building about said hour of one o'clock, without any negligence on her part and in the exercise of proper care, fell from said platform to the ground and was thereby bruised, strained, and otherwise greatly injured in her arm, shoulder, and person, and by reason thereof her wrist and shoulder was dislocated and broken and by reason thereof has permanently lost the use of her arm. That she has been put to great expense in doctoring and nursing, to wit, the sum of $100, and that she has sustained damages by reason of said injuries in the sum of six thousand dollars.

Wherefore plaintiff prays judgment against said defendant for the sum of six thousand dollars and costs of suit.

W. H. MUNGER AND
E. F. GRAY, *Atty's.*

STATE OF NEBRASKA, } ss:
Dodge County, }

Lucia Knuth, being duly sworn on her oath, says she is the plaintiff above named, that she believes the facts stated in the foregoing petition to be true.

LUCIA KNUTH.

Subscribed in my presence and sworn to before me, this 28th day of July, A. D. 1883.

[SEAL.] T. W. LYMAN,
Notary Public.

And afterwards, on the 27th day of August, 1883, there was filed in the office of said clerk an answer in the words and figures following, to wit:

4 *Answer.*

In the District Court of Dodge County, Nebraska.

LUCIA KNUTH *vs.* THE UNION PACIFIC RAILWAY COMPANY.

Comes now the said defendant, answering the petition of the plaintiff filed herein, says:

It admits its incorporation, its ownership and operation of a rail-

way as alleged; but defendant has no knowledge, other than as derived from said petition, that said plaintiff was, on the 16th and 17th days of May, 1883, a passenger on the defendant's said road as alleged, and therefore denies the same.

Defendant denies that it totally neglected and failed to furnish suitable, proper, and safe means whereby the said plaintiff could safely leave the depot waiting-room and depot grounds, at the said station of North Bend; and defendant alleges that the means provided for leaving the depot waiting-room and depot grounds are ample and safe, and any person exercising ordinary care can leave the same safely and without injury or inconvenience. Defendant denies that said platform was elevated four feet above the ground, or was narrow, angular, and irregular in its course and construction, but says that said platform was no higher than was necessary to enable passengers to alight from trains, but was sufficiently wide for the purposes for which it was intended; that it was straight and regular in its course and construction.

Defendant denies that it was guilty of any negligence contributing to the injury of the plaintiff as alleged, and denies that said plaintiff was injured in the manner and to the extent as charged, but says, if said plaintiff was injured by falling from said platform, it was through no fault, carelessness, or negligence of this defendant, but the fault and carelessness and negligence of said plaintiff alone contributing thereto.

Defendant denies that said plaintiff has been damaged in the sum of six thousand dollars, or in any other sum for which this defendant is in any wise responsible.

Wherefore defendant asks to be dismissed hence with its costs.

A. J. POPPLETON,
Att'y for Def't.

STATE OF NEBRASKA, }
Douglas County, } ss:

A. J. Poppleton being duly sworn, deposes and says: That he is the attorney for the defendant herein, which is a corporation; that he has read the foregoing answer and knows the contents thereof, and that the facts therein stated are true as he believes.

A. J. POPPLETON.

Sworn to before me, and signed in my presence, this 27th day of August, A. D. 1883.

[SEAL.] LEAVITT BURNHAM,
Notary Public.

And thereafter, on the 3rd day of September, 1883, a reply was filed in the office of the clerk of said court in words and figures following, to wit:

Reply.

In the District Court within and for Dodge County, Nebraska.

LUCIA KNUTH, Plaintiff
vs.
THE UNION PACIFIC RALWAY COMPANY, Defendant.

And now comes the plaintiff, and for a reply to the answer of the defendant filed in this action says she denies each and every allegation of new matter in said answer contained.

W. H. MUNGER,
E. F. GRAY, *Att'ys.*

6 STATE OF NEBRASKA, } ss:
Dodge County, }

Lucia Knuth, being duly sworn, on her oath says: That she is the plaintiff above named; that the facts stated in the foregoing reply are true, as she verily believes.

LUCIA KNUTH.

Subscribed in my presence and sworn to before me, this 31st day of August, A. D. 1883.

[SEAL.] T. W. LYMAN,
Notary Public.

And afterwards, to wit, on the 2d day of October, A. D. 1883, there was filed in the office of the clerk of said district court a petition for removal, in words and figures following, to wit:

Petition for Removal.

In the District Court for Dodge County, State of Nebraska.

LUCIA KNUTH *vs.* THE UNION PACIFIC RAILWAY COMPANY.

The petition of the Union Pacific Railway Company respectfully shows to the court—

That it is a corporation existing, organized, and existing ander and by virtue of the laws of the United States, to wit, an act of Congress entitled "An act to aid the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1st, 1862, and an act amendatory thereof, entitled "An act to amend section four of an act entitled an act to aid the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other pur-
7 poses, approved July 1st, 1862," approved July 2d, 1864; that it is not a banking corporation.

That the above-entitled action was commenced on the 13th day of August, 1883; that it has not been, nor according to the course and practice of this court could it have been, tried until the present time.

That the matter in dispute exceeds the sum of $500.00 exclusive of costs.

That the said action was brought for the recovery of $6,000.00 for alleged personal injuries, and that the defendant has a defense to said action arising under and by virtue of the laws of the United States, to wit, the act and amendatory act of Congress above referred to.

Your petitioner herewith presents and files a good and sufficient bond, conditioned that it will enter and file in the circuit court of the United States for the district of Nebraska, on the first day of its next session, a copy of the record in this action, and for payment of all costs that may be awarded against it by said court, if it shall hold that this action was wrongfully or improperly removed, and to do such other appropriate acts as it may be required to do upon the removal of this action.

Your petitioner therefore prays this court to accept said bond, and to remove this cause to the circuit court of the United States for the district of Nebraska, and for such other relief as may be just and equitable.

UNION PACIFIC RAILWAY COMPANY,
By A. J. POPPLETON, *Its Attorney.*

STATE OF NEBRASKA, }
Douglas County, } ss:

A. J. Poppleton, being duly sworn, deposes and says: That he is the attorney for the defendant herein, which is a corporation; that he has read the foregoing petition, and knows the contents thereof, and that the facts therein stated are true.

8

A. J. POPPLETON.

Sworn to before me and signed in my presence, this second day of October, 1883.

[SEAL.] JNO. G. TAYLOR,
Notary Public.

And on the same day, to wit, October 2nd, 1883, there was filed in the office of the clerk of said district court a bond for removal, in words and figures following, to wit:

Bond.

Know all men by these presents, that the Union Pacific Railway Company as principal, and Thos. L. Kimball as surety, are held and firmly bound unto Lucia Knuth in the sum of $500.00, for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our representatives, heirs, and assigns by these presents.

Signed this 2nd day of October, A. D. 1883.

The condition of the above obligation is such, that whereas the said Lucia Knuth has commenced an action in the district court for Dodge county, Nebraska, against the said Union Pacific Railway

Company to recover the sum of $6,000.00 damages for alleged personal injuries, and the Union Pacific Railway Company has filed its petition to remove said cause to the circuit court of the United States for the district of Nebraska:

Now, therefore, if the said Union Pacific Railway Company shall enter and file, or cause to be entered and filed, in said circuit court the record in said cause on or before the first day of the next session thereof, and shall there appear and enter special bail if the same was originally requisite in said cause, and shall do such other appropriate acts as may be required to be done upon the removal of said cause, then this obligation shall be void; otherwise, of full force and effect.

THE UNION PACIFIC RAILWAY CO.,
By A. J. POPPLETON, *its Att'y.*
THOMAS L. KIMBALL.

And now on this 4th day of October, 1883, it being the 3rd day of said term, this cause came on for hearing on defendant's petition for removal, and the following order was made, to wit:

Order for Removal.

LUCIA KNUTH *vs.* THE UNION PACIFIC RAILWAY COMPANY.

The defendant herein having, within the time provided by law, filed his petition for removal of this cause to the circuit court of the United States, and having at the same time offered good and sufficient surety pursuant to statute, therefore the court, finding that the defendant is a corporation, organized under and existing by virtue of the laws of the United States, and that the defendant has a defense to said action arising under and by virtue of the laws of the United States, as set forth in said petition for removal, and that it is entitled to such removal, do hereby accept said petition and bond, and order that the said cause be removed for trial unto the next session of the circuit court of the United States for the district of Nebraska, pursuant to the statutes of the United States, and all further proceedings in this court, in said cause, are hereby stayed.

THE STATE OF NEBRASKA, } *ss:*
County of Dodge, }

I, Geo. H. Forney, clerk of the district court of Dodge county, do hereby certify that the above and foregoing is a true and perfect transcript of the record in the above entitled cause (except summons and return thereon, and subpœna & returns thereon), as the same is on file and of record in my office.

Dated this 15th day of October, 1883.

GEO. H. FORNEY,
Clerk of the District Court of Dodge Co., Neb.

Fee Bill.

In Dodge County District Court.

LUCIA KNUTH, Plaintiff, *vs.* THE UNION PACIFIC RAILWAY COMPANY, Defendant.

Cost of the clerk district court		8 13
Cost of the sheriff of Dodge Co		7 85
Witness fee of Henry Ehlers		6 20
" "	W. R. Dickerson	6 00
" "	A. J. Kenyon	5 60
" "	H. Williams	5 60
" "	Milton May	5 60
Total cost to date		$44 98

I hereby certify that the above and foregoing is a true and correct statement of the costs as the same are taxed in the above-entitled cause, and that the same have been paid in full by the def't, the Union Pacific Railway Company.

Attest: GEO. H. FORNEY, [SEAL.]
Clerk Dist. Court, Dodge County, Neb.

Upon the back of said transcript appear endorsements in words and figures following, to wit: No. 145 H. Lucia Knuth *vs.* The U. P. R'y Co. Transcript. Filed Nov. 9, 1883. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 15th day of November, 1883, a motion to remand said cause was filed in said case; which said motion is in words and figures following, to wit:

11 *Motion to Remand.*

In the Circuit Court of the United States for the District of Nebraska.

LUCIA KNUTH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendant.

And now comes the plaintiff and moves the court to remand said cause to the district court of Dodge county, Nebraska, for the following reasons to wit:

1st. That it appears from the record that this court has no jurisdiction of said action.

2nd. That it appears from the record in said cause that defendant has no defense to said action arising under and by virtue of any law of the United States.

3rd. That said action was improperly removed from the State court.

4th. That it appears from the record that the facts stated in the petition for removal are untrue.

E. F. GRAY & W. H. MUNGER,
Att'ys for Plaintiff.

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 145 H. Lucia Knuth *vs.* The U. P. R'y Co. Motion to remand said cause. Filed Nov. 15, 1883. Elmer D. Frank, clerk. E. F. Gray & W. H. Munger, pl'ffs atty's.

Thereupon, afterwards, at the November term of said court, on the 15th day of November, 1883, the following proceedings were had as appears of record on folio 830, Journal H, of said court, to wit:

LUCIA KNUTH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendant. } No. 145 H.

Now, on this day, to wit, the 15th day of November, 1883, this cause came on for hearing on the motion of plaintiff to
12 remand said cause to the district court of Dodge county, Nebraska. And the court, after being fully advised in the premises, is of the opinion that the court has no jurisdiction of said case, and does sustain said motion, and accordingly orders said cause remanded; to which ruling and order of the court defendant at the time duly excepted.

Thereupon, afterwards, to wit, on the 19th day of December, A. D. 1883, a writ of error was allowed in said case and a citation issued thereon, of which said writ of error and citation the following are the originals:

13 UNITED STATES OF AMERICA, }
District of Nebraska, } *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Lucia Knuth, plaintiff, and The Union Pacific Railway Company, defendant, a manifest error hath happened, to the great damage of the said plaintiff in the said cause, as by complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 19th day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States shall be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the

said Supreme Court of the United States, at Omaha, in said district, this 19th day of December, 1883.

ELMER D. FRANK, *Clerk.*

Allowed by—

ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 145 H. United States circuit court, district of Nebraska. Lucia Knuth *vs.* The Union Pacific R'y Co. Writ of error. Filed Dec. 19, 1883. Elmer D. Frank, clerk.

14 THE UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

To Lucia Knuth, Greeting:

You are hereby cited and admonished to be and to appear at a Supreme Court of the United States, to be holden at Washington, on the 19th day of January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein the Union Pacific Railway Company is plaintiff in error, and Lucia Knuth is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 19th day of December, 1883.

ELMER S. DUNDY, *Judge.*

Service of the above citation is hereby acknowledged, this 20th day of December, 1883.

W. H. MUNGER,
Att'y for D'f't in Error.

[Endorsed:] No. 145 H. United States Circuit Court, district of Nebraska. Lucia Knuth *vs.* The Union Pacific R'y Co. Citation. Filed Dec. 19, 1883. Elmer D. Frank, clerk.

15 UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

By virtue of the foregoing writ of error, and in obedience thereto, I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios, from 1 to 15, contain true and faithful transcripts of all pleadings, process, and proceedings of record and on file in my office as said clerk, in the case of Lucia Knuth *vs.* The Union Pacific Railway Company, and that a copy of the writ of error and citation has been lodged and remains in my said office.

Witness my hand and the seal of said court, at Omaha, this 31st day of December, 1883.

[SEAL.] ELMER D. FRANK, *Clerk.*

Endorsed on cover: Nebraska C. C. U. S. No. 810. The Union Pacific Railway Company, plaintiff in error, *vs.* Lucia Knuth. Filed 17th January, 1884.

2—810

115-1

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.—No. 810.

THE UNION PACIFIC RAILWAY COMPANY,

Plaintiff in Error,

against

LUCIA KNUTH,

Defendant in Error.

PHILADELPHIA BAR ASSOCIATION

FEDERAL JURISDICTION OVER THE PACIFIC RAILWAYS.

ARGUMENT.

JOHN F. DILLON,

For the Plaintiff in Error.

C. G. BURGOYNE, "Quick" Print, 146, 148 & 150 CENTRE ST., N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1884.

THE UNION PACIFIC RAILWAY CO.,
Plaintiff in Error,

AGAINST

LUCIA KNUTH.

No. 810.

Statement of Case.

THIS ACTION was brought by Lucia Knuth against the railway company in one of the State courts of Nebraska.

The character of the railway company is stated in complaint as follows:

"Said defendant was and now is a corporation duly organized under and by virtue of acts of the Congress of the United States, and owned and operated a certain railroad known as the Union Pacific Railway, &c."
Record, p. 1.

FOR CAUSE OF ACTION, the plaintiff below alleged in substance that she was a passenger on one of the defendant's trains; that plaintiff, in attempting to leave the depot of said railway company at North Bend, Nebraska, without negligence on her part and in the exercise of proper care, fell from the platform of said depot to the ground, and was thereby injured; that the platform in front of said depot was too narrow and badly

constructed, and that defendant was bound to furnish a suitable and safe platform.

Damages are claimed in the sum of six thousand dollars.

Record, pp. 1 and 2.

DEFENDANT'S ANSWER, filed at the first term, admitted its incorporation and existence as alleged, and denied all negligence on its part, and all liability to the plaintiff.

Record, p. 3.

PLAINTIFF FILED A REPLY denying the allegations of new matter in the answer.

Record, p. 4.

THE DEFENDANT COMPANY filed a PETITION FOR THE REMOVAL of the cause into the Federal court, which petition was accompanied with proper bond and surety.

Record, pp. 4–6.

THE PETITION FOR REMOVAL set out the following jurisdictional facts:

"That defendant is a corporation existing, organized and existing under and by virtue of the laws of the United States, to wit, an Act of Congress entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes,' approved July 1st, 1862, and an act amendatory thereof, entitled 'An Act to amend section four of an act entitled an Act to aid the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes, approved July 1st, 1862,' approved July 2d, 1864; that it is not a banking corporation; that the amount in dispute exceeds the

sum or value of five hundred dollars; *that the defendant has a defense to said action arising under and by virtue of the laws of the United States, to wit, the act and amendatory act of Congress above referred to.*"

Record, pp. 4 and 5.

The State Court ordered the cause to be removed to the Circuit Court of the United States for trial, and a transcript was duly filed therein.

Record, p. 6.

THE PLAINTIFF MOVED TO REMAND on the following grounds:

"1st. That it appears from the record that this Court has no jurisdiction of said action.

"2d. That it appears from the record in said cause that the defendant has no defense to said action arising under and by virtue of any law of the United States.

"3d. That said action was improperly removed from the State Court.

"4th. That it appears from the record that the facts stated in the petition for removal are untrue."

Record, p. 7.

THE MOTION TO REMAND WAS SUSTAINED, to which ruling the railway company excepted.

Record, p. 8.

Writ of error to Supreme Court and citation.

Record, pp. 8–9.

ASSIGNMENT OF ERRORS, that the Court erred in remanding the cause.

ARGUMENT.

It will be seen that the facts in this case are similar to those in the case of Myers vs. The Union Pacific Railway.

The plaintiff alleges the Federal character of the railway company (Record, p. 1), and therefore the only question to be considered is the sufficiency of the petition for removal.

In support of the Federal jurisdiction we submit the cause on the printed argument in *Myers' case* above mentioned, and upon the argument in the similar case of the *Union Pacific Railway Company vs. The City of Kansas*, No. 461 of this term. Both of those arguments are filed herewith.

JOHN F. DILLON,
For the Railway Company.

1151

SUPREME COURT U.S.
FILED
NOV 14 1884
JAMES H. McKENNEY
CLERK

UNITED STATES SUPREME COURT.

October Term, 1884.

NO. 810.

THE UNION PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

LUCIA KNUTH,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

W. H. MUNGER and E. F. GRAY, Atty's for Def't in Error.

The plaintiff alleges the Federal character of the railway company (Record, p. 1), and therefore the only question to be considered is the sufficiency of the petition for removal.

In support of the Federal jurisdiction we submit the cause on the printed argument in *Myers' case* above mentioned, and upon the argument in the similar case of the *Union Pacific Railway Company vs. The City of Kansas*, No. 461 of this term. Both of those arguments are filed herewith.

JOHN F. DILLON,
For the Railway Company.

1157

RECEIVED
NOV 14 1884
JAMES H. McKENNEY
CLERK

UNITED STATES SUPREME COURT.

October Term, 1884.

NO. 810.

THE UNION PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

LUCIA KNUTH,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

W. H. MUNGER and E. F. GRAY, Atty's for Def't in Error.

UNITED STATES SUPREME COURT.

October Term, 1884.

—NO. 810.—

THE UNION PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

LUCIA KNUTH,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This action was brought in the District Court for Dodge County, Nebraska, by the defendant in error against the plaintiff in error, to recover damages sustained for personal injuries. The plaintiff (defendant in error) in her petition alleges that the defendant (plaintiff in error) is a corporation duly organized under and by virtue of acts of the Congress of the United States, and owned and operated a certain railroad known as the Union Pacific Railway, running from Omaha, Nebraska, to Ogden, Utah Territory, and was a common carrier of passengers for hire upon said road. That plaintiff was a passenger upon said road for a certain reward paid to defendant.

That by reason of the negligence and unskillful conduct of

the defendant and its agents, the plaintiff sustained personal injuries in the sum of $6,000. Defendant in its answer admits its incorporation, its ownership and operation of a railway as alleged, but denies that it was guilty of any negligence which contributed to plaintiff's injury, and says that if plaintiff was injured as alleged, it was through no fault, carelessness or negligence of defendant, but the fault, carelessness and negligence of said plaintiff alone. Plaintiff in her reply denies any negligence, carelessness or want of care on her part. Defendant (plaintiff in error) filed in said District Court its petition for a removal of the cause into the Circuit Court of the United States for the District of Nebraska, stating in such petition its grounds for such removal as follows: "That it is a corporation organized and existing under and by virtue of the laws of the United States, to-wit: an act of Congress entitled, 'An act to aid the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military and other purposes,' approved July 1st, 1862, and an act amendatory thereof entitled, 'An act to amend section four of an act entitled an act to aid the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military and other purposes, approved July 1st, 1862,' approved July 2d, 1864. That the said action was brought for the recovery of $6,000 for alleged personal injuries, and that the defendant has a defense to said action arising under and by virtue of the laws of the United States, to-wit: the act and amendatory act of Congress above referred to."

The usual order of removal was made by the State court, and a transcript of the proceedings filed in the United States Circuit Court. Plaintiff (defendant in error) filed her motion to remand said cause to the State court for the following reasons, to-wit:

First, That it appears from the record that this court has no jurisdiction of said action.

Second, That it appears from the record in said cause that defendant has no defense to said action arising under and by virtue of any law of the United States.

Third, That said action was improperly removed from the State court.

Fourth, That it appears from the record that the facts stated in the petition for removal are untrue.

The Circuit Court sustained the motion and remanded the cause, from which order the defendant (plaintiff in error) prosecutes its writ of error.

ARGUMENT.

From the foregoing statement of facts it will be seen that no issue is presented by the pleadings as to the corporate existence of defendant under said acts of the Congress of the United States, the only issue presented being that of the injuries of plaintiff, the negligence of defendant, and contributory negligence of plaintiff.

Said acts of Congress referred to do not exempt defendant from the common law liability for acts of negligence, nor do said acts of Congress in any way define what acts shall or shall not constitute actionable negligence, but the liability of defendant in this action must, under the pleadings, be determined by the common law rules of negligence. But a single question then is presented for the consideration of the Court, viz: does the simple fact of the defendant being a corporation, organized and created under acts of the Congress of the United States give it a defense arising under and by virtue of the laws of the United States within the meaning of the several acts?

We have not the brief of plaintiff in error, and hence are not advised as to the theory or authorities which they will present to sustain their claim that the cause was properly removed into the United States Court, but upon the argument of the

motion in the Circuit Court reliance was placed upon the case of *Osborn vs. United States Bank, 9 Wheaton, 738.* In that case the act of Congress constituting the bank charter expressly provided that courts of the United States should have jurisdiction of all suits, and it was held to be within the power of Congress to confer such jurisdiction. In other words, it was held that Congress had power to confer jurisdiction upon Circuit courts in suits in which a federal corporation was a party, irrespective of the subject matter. But we are not aware of any act of Congress which authorizes the present plaintiff in error to remove a cause from the State court into the United States Circuit Court upon any other terms than those provided for all other persons and corporations.

The ground of removal in the present case is that "the defendant has a defense to said action arising under and by virtue of the laws of the United States."

To say that defendant only has an existence because of a law of the United States, and that it is necessary to have an existence to enable it to make a defense, and hence it has a defence under the law of its existence, can have no application in this case as the legal existence of defendant is admitted by the pleadings and is not an issue in this case; the rights and libilities of the parties are not made to depend upon the construction of any law of the United States, but upon ths common law rules of negligence.

In *Gold Washing & Water Co. vs. Keys, 6 Otto, 203*, the Court say: "A cause cannot be removed from a State Court simply because in the progress of the litigation it may become necessary to give a construction to the constitution or laws of the United States. The decision of the case must depend upon that construction. The suit must in part at least arise out of a controversy between the parties in regard to the operation and the effect of the constitution or laws upon the facts involved." We would ask what provision of the constitution or

what law of the United States requires any construction upon the facts involved in this case. We can not conceive of any.

The identical question involved in this case has been decided in the Circuit Courts, adverse to the claim of right of removal, in the following cases :

Myers vs. Union Pacific Railway Co., 16 Federal Reporter, 229.

Magee vs. Union Pacific R. R., 2 Sawyer, 447.

Since the foregoing has been in print we have been served with a copy of the brief of plaintiff in error, in which the learned counsel we think presents but two propositions which have any bearing upon this case. They are : *1st*, That the allegation in the petition for removal, that defendant has a defense arising under a law of the United States, can not be controverted by motion, but must be raised by a plea to the jurisdiction. *2nd*, That because defendant is a corporation organized under a law of the United States, therefore any defense which they may make is one necessarily arising under a law of the United States.

The first proposition, it seems to us, is clearly untenable, for the question as to whether the defense arises under a law of the United States must be determined from an inspection of the record, and we understand the practice to be that when want of jurisdiction appears from the record, it may be taken advantage of by motion; that a *plea* is only required when facts establishing want of jurisdiction are required to be shown *aliunde:* In other words, a plea stating facts, that in any case a reference to the record fully proves, and no evidence outside of the record need be introduced to prove true is quite unnecessary, because the motion is based upon the record and is considered with reference to the facts appearing on the record.

That the whole record including the pleadings in the State

Court are to be considered in determining the question of jurisdiction has, we think, been decided in this court in

Bondurant vs. Watson, 13 Otto, 281.
Robertson vs. Cease, 97 U. S., 646.

The second proposition seems to us equally untenable.

The learned counsel for plaintiff in error in his valuable treatise on Removal of Causes, on page 33, in the consideration of the act of March 3d, 1875, says:

"But there must be some question actually involved in the "case, depending for its determination upon the correct con- "struction of the constitution, or some law of Congress, or some "treaty of the United States, in order to sustain the Federal "jurisdiction under the clause under consideration, namely, "'suits arising under the constitution or laws, or treaties, of the "United States.' Accordingly a case relating to the title to "land is not one of Federal jurisdiction, although the title may "be originally derived under an act of Congress, if no question "arises, or is raised, as to the validity or operative effect of the "act of Congress, and the rights of the parties depend upon "State statutes or the general principles of law."

The correctness of the foregoing proposition is fully sustained in the citations by the author of the decisions of this court. Apply the foregoing rule to the case at bar, and it is clear that it is not a suit arising under the Constitution, or laws, or treaties of the United States, and hence not removable under the act of March, 1875.

Nor can it be said that the case is removable under Section 640 of the Revised Statutes, as that section requires that the defendant have a *defense* arising under a law of the United States.

If, as is claimed by counsel for plaintiff in error, any and every defense which can be made by a corporation created and organized under an act of the Congress of the United States is necessarily a defense arising under a law of the United

States, why does said Section 640 require the verified petition for a removal to state that the defendant has a defense arising under such law? The requirement that such allegation should be made in the petition for removal conclusively shows that Congress did not intend that a removal should be had simply on the ground that defendant was created by a law of the United States, but that such removal should only be had when the determination of some material issue in the case was to be the result of a construction of some law of the United States.

Suppose a corporation created by Congress should be sued in an action of assumpsit, and the defense as stated in the answer should be the general issue of *non-assumpsit* or if sued in an action of debt and the defense be *non est factum*, can it with any candor be said that such defense is one arising under a law of the United States, rather than under the general law? On principle wherein does such cases differ from the one at bar?

In the case at bar the existance, organization or charter of the defendant, corporation not being in issue, and upon the trial no question can arise calling for any decision or construction of its charter or any law of the United States, it seems to us that in principle it is clearly within the decision of this court in

Romie vs. Carsanors, 91 U. S., 380.
McStay vs. Friedman, 92 U. S., 723.

The judgment of the Circuit Court should be affirmed.

W. H. MUNGER AND
E. F. GRAY,
Attys. for Deft. in Error.